STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
William B. Murphy, Patrick M. Meter and Deborah A. Servitto

SBC HEALTH MIDWEST, INC,

Petitioner/Appellee,

v

CITY OF KENTWOOD,

Respondent/Appellant.
_____/

Supreme Court Docket No. 151524

Court of Appeals No. 319428

MTT Docket No. 416230
Tribunal Judge Steven H. Lasher

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CITY OF KENTWOOD'S REPLY BRIEF

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I. CONTRARY TO PETITIONER'S ARGUMENT, THE COURT OF APPEALS ERRED IN CONCLUDING THAT *TYLER* AND *VOORHIES* PRECLUDED APPLICATION OF THE *IN PARI MATERIA* DOCTRINE IN THIS CASE

In *Tyler v Livonia Public Schools*, 459 Mich 382; 590 NW2d 560 (1999), the Supreme Court declined to construe the word "plan" in a subsection of the Worker's Disability Compensation Act to encompass private and statutory pensions based on the use of "plan" in other subsections of the statute to mean both. The Court declined to apply the doctrine of *in pari materia* in ascertaining the meaning of the word "plan" because the subsection of the statute at issue was unambiguous. *Id.* at 391-392. The Court further explained:

> That the Legislature would feel comfortable treating coordination requirements for privately negotiated pension plans differently than for those pensions created by statute is not hard to understand, as legislatures dealing with labor matters frequently utilize different approaches for public and private employees. This can be seen in the legislative regulation of collective bargaining, labor negotiations, injunctions, arbitrations, and even work stoppages. It seems clear that there is just more legislative reluctance to intervene statutorily in private employment contracts than in public employment contracts. Accordingly, that this legislation would treat this aspect of a labor contract differently, by allowing only parties to privately negotiated pensions to opt out of coordination, is not disharmonious with this pattern, nor should it be viewed with a suspicion that the Legislature might have been unfamiliar with such distinctions.

The Court went on to explain that there was a rational basis for treating the two types of pensions (private and statutory) differently. In order to understand the statute "in context", the Court looked outside the statute and reviewed other legislation, as well as the treatment of pensions under federal law. *Id.* at 393-394.

Contrary to the Court of Appeals decision and Petitioner's argument, *Tyler* does not prohibit the Court from applying the *in pari materia* doctrine in this case. Instead, *Tyler* reaffirms that the doctrine is one tool that is available in interpreting an ambiguous statute. And nothing in *Tyler*

prevents application of the well settled rule that "a statute that is unambiguous on its face can be 'rendered ambiguous by its interaction with and its relation to other statutes.' " *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997) (citation omitted). As the City has presented in its Application, MCL 211.9(1)(a) is ambiguous based on its interaction and relation to other statutes in the General Property Tax Act ("GPTA"), which as a whole promotes nonprofit educational institutions. See e.g., *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748, 763; 298 NW2d 422 (1980) (Williams, J., dissenting) ("It is clear that the Legislature wished to promote nonprofit theaters, libraries, and charitable, educational and scientific institutions…by providing them a property tax exemption."). Accordingly, the doctrine of *in pari materia* applies and, for the reasons set forth in the Application, requires reversal of the Court of Appeals opinion which, if left to stand, extends an exemption reserved for non-profit educational institutions to a for-profit corporation.

Tyler is also distinguishable because it examined the statutory treatment of two different types of pension plans and concluded that there was a basis for treating the plans differently. The statutes at issue in this case do not apply to different types of property—both MCL 211.9(1)(a) and MCL 211.7n apply to personal property. Thus, while a pension plan may fit the category of private *or* statutory and, thus, be subject to different requirements, "personal property" is "personal property" under both MCL 211.9(1)(a) and MCL 211.7n. Personal property has a particular meaning and there is no justification for arriving at a different taxable status for the same property under these statutes. Because one statute requires nonprofit status for the exemption, and the other does not (for the same property), the statutes conflict. If a taxpayer's nonprofit or for-profit status is irrelevant as the Court of Appeals and Petitioner would have it, then the GPTA exemption(s) carved out by the Legislature for nonprofit institutions is meaningless.

Petitioner also claims that *Voorhies v Faust*, 220 Mich 155; 189 NW 1006 (1922), which was cited in the Court of Appeals decision, is dispositive of the issue presented in this case, as it precludes application of the *in pari materia* doctrine. In *Voorhies,* the Court concluded that search warrants could be executed in the nighttime because the statute under which the search warrant was issued contained no provision limiting service to the daytime. The Court refused to read into the statute restrictions from "earlier acts" limiting service of warrants to daytime, finding that the Legislature was free to omit that restriction in future enactments. The Court explained:

> The rule, in pari materia, does not permit the use of ***a previous statute*** to control by way of former policy the plain language of ***a subsequent statute***, much less to add a condition or restriction thereto found in the earlier statute and left out of the later one. The contention made, if allowed, would go beyond the construction of the statute, and ingraft upon its provisions a restriction which the Legislature might have added but left out. [*Id.* at 157-158 (emphasis added).]

Unlike *Voorhies,* the Court is not being asked to read into a later statute a restriction from a previous statute that was left out. Quite the contrary—the Court is being asked to recognize that MCL 211.7n, which contains a requirement that the exemption claimant be "nonprofit", reflects the Legislature's intent with regard to the personal property of educational institutions. If the Legislature intended to exempt the personal property of all educational (and scientific) institutions regardless of nonprofit status, the personal property exemption in MCL 211.7n would be meaningless.[1]

The result requested by the City in this case is the same result reached in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), in which the Court very clearly

[1] Petitioner suggests that this Court should not consider the City's response to Petitioner's arguments under *Tyler* or *Voorhies* because the City "ignored" the cases in its Application. The City's Application plainly discusses the same principles of statutory interpretation for which *Tyler* and *Voorhies* were cited. Certainly a litigant should not be precluded from responding to an argument on appeal simply because it cites a different case for a same or similar proposition. That is absurd. Further, the purpose of a reply brief is to respond to matters in Petitioner's response brief and, thus, Petitioner's desire to have the last word conflicts with the rules of appellate practice. See MCR 7.302(E), 7.212(G).

concluded that an exemption claimant seeking a charitable exemption under *either* MCL 211.7o *or* 211.9, *must be a nonprofit institution*. There is no reason to reach a different conclusion with regard to educational institutions, as the operative statutory language is identical:

> *MCL 211.9(1)(a):* "The personal property of charitable, educational, and scientific institutions…."
>
> *MCL 211.7o*: "Real or personal property owned and occupied by a nonprofit charitable institution…."
>
> *MCL 211.7n*: "Real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions…."

Petitioner advances the wrong "lesson" from *Wexford*: that this Court cannot "engraft" language into a statutory provision. Plainly, Petitioner's analysis of *Wexford* misses the importance and relevance of that decision to this case. Petitioner also fails to explain why *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920), which predates the current statutory scheme, should control, especially where the rule Petitioner's distills from that case clearly conflicts with the result in *Wexford*, where the Court expressly held that nonprofit status was a requirement for exemption under MCL 211.7o ***and*** MCL 211.9, despite the absence of "nonprofit" in MCL 211.9.[2]

II. CONTRARY TO PETITIONER'S ARGUMENT, THE WORD "NONPROFIT" IN MCL 211.7O MODIFIES THEATER, LIBRARY, EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

In an attempt to avoid the conclusion dictated by the application of the *in pari materia* doctrine, Petitioner argues that MCL 211.7n is not limited to nonprofit educational institutions and, thus, there is no conflict between MCL 211.9(1)(a) and MCL 211.7n. Petitioner reaches

[2] Petitioner claims that the City mis-reads *Wexford* and that the Court's "nonprofit" requirement for MCL 211.9 was simply attributable to the fact that charitable institutions are by their very nature nonprofit. This is incorrect. Michigan recognizes (for example) a low-profit limited liability company which is required to have a primarily charitable purpose. MCL 450.4102.

this conclusion by arguing that the word "nonprofit" in MCL 211.7n modifies only the word "theater" and does not apply to educational institutions.

Contrary to Petitioner's argument, this Court has held that an introductory adjective modifies the list of words following the adjective—not merely the word directly following the adjective. *Hanselman v Wayne Co Concealed Weapon Licensing Bd*, 419 Mich 168, 180; 351 NW2d 544 (1984). The *Hanselman* Court reviewed the language in MCL 24.203 and concluded that in the phrase "state department, bureau, division, section, board, commission, trustee, authority or officer," the word "state" modifies "each and every one of the subsequent units or persons and *does not merely modify the word department*" which directly followed the adjective (emphasis added). Similarly, the word "nonprofit" in MCL 211.7n is an introductory adjective and, accordingly, it modifies not only "theater" (the word directly following the adjective), but each and every word in the list, including "library, educational, or scientific institutions."

Petitioner relies on legislative history to suggest a particular legislative intent, all to avoid the impact of this rule of statutory construction. Petitioner's analysis of MCL 211.7n, however, is in direct conflict with its own argument (regarding MCL 211.9) that the Court should not look outside the plain words of an unambiguous statute. See also *In re Certified Question from US Court of Appeals for Sixth Circuit*, 468 Mich 109, 116; 659 NW2d 597 (2003) (this Court will "not resort to legislative history to cloud a statutory text that is clear").

III. THE UNPUBLISHED DECISION IN *CHILDREN'S HOSPITAL* IS NOT DISPOSITIVE OF THE ISSUES IN THIS CASE AS PETITIONER CLAIMS

Petitioner also erroneously argues that the Court of Appeals decision is consistent with its earlier decision in *Children's Hosp of Michigan v Commerce Twp*, unpublished opinion per curiam of the Court of Appeals, issued April 21, 1998 (Docket Nos. 201864 and 201865), **Exhibit A.**

In *Children's Hospital,* the township argued that the petitioners were not entitled to personal property tax exemptions under §9(a) of the GPTA [MCL 211.9(1)(a)] because (1) MCL 211.7r (the "public health exemption") governed tax exemptions for hospitals and clinics; and (2) the petitioners did not meet the requirements for an exemption under MCL 211.7r because that section required ownership of the real property on which the personal property was located and the petitioners did not own the property.

The Court of Appeals concluded that the petitioners were not entitled to a personal property tax exemption under MCL 211.7r because they did not own the real property upon which personal property was located. The Court concluded, however, that the petitioners could still claim an exemption under §9(a) of the GPTA:

> Defendant contends that § 7r of the GPTA, rather than § 9(a), is solely applicable to plaintiffs in this case, because § 7r was more recently enacted and is more specific than § 9(a). Defendant's argument presupposes that the statutes conflict. It is only where two statutes conflict, that a more specific statute prevails over a generally applicable statute. See *Ladd v Ford Consumer Finance Co,* 217 Mich App 119, 128; 550 NW2d 826 (1996). Moreover, when two statutes relate to the same subject, courts will give effect to both acts if possible. *McCready v Hoffius*, 222 Mich App 210, 217; 564 NW2d 493 (1997). In the case at bar, the statutes do not conflict.
>
> In order to claim an exemption for their real and personal property under § 7r, a taxpayer must satisfy two elements: (1) it must be a nonprofit trust that owns and occupies real property, and (2) and it must use its property for "hospital or public health purposes." See MCL 211.7r. In comparison, § 9(a) of the GPTA authorizes a taxpayer to claim an exemption for its personal property if it can establish that it is a "charitable institution." MCL 211.9(a); see also *McFarlan Home v Flint*, 105 Mich App 728, 734-735; 307 NW2d 712 (1981). Neither statute hampers the operation of the other. An institution may claim to be both a "nonprofit trust" and "charitable," and therefore qualify for an exemption under either statute. Nonprofit status does not, in itself, qualify an organization as a charitable institution. See *Michigan Baptist Homes & Development Co v Ann Arbor*, 55 Mich App 725, 730-735; 223 NW2d 324 (1974), aff'd 396 Mich 660; 242 NW2d 749 (1976); see also *Retirement Homes, Inc v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982). Since the statutes do not conflict, we reject defendant's argument. [*Id.*, slip op at 1-2.]

Unlike the circumstances in *Children's Hospital*—where the petitioner's exemption request could be considered under two ***alternative statutes that did not conflict***—the Tribunal in this case

properly concluded that the two statutes at issue in this case *do* conflict. In *Children's Hospital,* the statutes had different requirements (i.e., one requires proof that the petitioner is a nonprofit trust that uses its property for hospital or public health purposes and the other requires proof that the petitioner is a charitable institution). Because the elements were different, it was possible that the petitioner in that case could qualify for an exemption under one statute, but not the other.

The decision in *Children's Hospital* cannot be extended to MCL 211.9(1)(a) and MCL 211.7n, under which the requirements for establishing that the petitioner is an educational institution are the same (i.e., the elements of the "educational institution" test are the same). It is nonsensical to conclude that a for-profit educational institution that is not entitled to an exemption under MCL 211.7n can simply claim the same exemption under MCL 211.9(1)(a). This case does not present "two separate and alternative exemption statutes that have separate qualification criteria" as Petitioner contends. Instead, it involves two statutes that conflict on the issue of educational institutions and the Court of Appeals decision exacerbates the conflict, inviting for-profit educational, charitable and scientific institutions to seek exemptions under MCL 211.9(1)(a) that would otherwise be plainly be denied under MCL 211.7n.

In *Children's Hospital*, the Court concluded that "[n]either statute hampers the operation of the other. An institution may claim to be both a 'nonprofit trust' and 'charitable,' and therefore qualify for an exemption under either statute." To agree with Petitioner's analysis of *Children's Hospital*, this Court would have to reach the impossible conclusion that neither MCL 211.9(1)(a) nor MCL 211.7n hampers the operation of the other because an institution may claim to be both for-profit and nonprofit and therefore qualify for an exemption under either statute.

IV. CONTRARY TO PETITIONER'S ARGUMENT, MCL 380.503(9) DOES NOT SUPPORT EXTENDING THE EDUCATIONAL INSTITUTION EXEMPTION TO FOR-PROFIT ENTITIES

MCL 380.503(9) states in part:

> Unless the property is already fully exempt from real and personal property taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, property occupied by a public school academy and used exclusively for educational purposes is exempt from real and personal property taxes levied for school operating purposes under section 1211, to the extent exempted under that section, and from real and personal property taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

Petitioner claims (in footnote 14 of its response brief) that this statute is evidence of a broad legislative intent to exempt property used for educational purposes.

Even assuming that property occupied by a public school academy may be owned by a for-profit entity, the partial exemption under MCL 380.503(9) is not granted by virtue of ownership; hence, the for-profit status of the owner is irrelevant. The exemption is granted by virtue of occupancy and use by a public school academy. And, a public school academy is required to be organized under the Michigan Nonprofit Corporation Act. MCL 380.502(1).[3]

Thus, the statute does not support the Court of Appeals decision in this case as Petitioner claims, as nothing in MCL 380.503(9) exempts property occupied by a for-profit educational institution, or supports extending exemptions that are otherwise available for non-profit entities to those organized for-profit.

[3] See also MCL 380.501 ("A public school academy is a public school…"). Public school academies are operated by one or more boards of a K-12 school district, intermediate school, community college, or state public university. MCL 380.502. A member of a board of directors of a public school academy is a public officer and must take an oath of office. Further, public school academies have governmental immunity, are required to comply with laws such as the Open Meetings Act and Freedom of Information Act. MCL 380.503. Thus, there is simply no comparison between for-profit corporations like Petitioner and a public school academy.

CONCLUSION AND RELIEF REQUESTED

For all of the reasons set forth above, Respondent City of Kentwood respectfully requests that this Court issue an order reversing the Court of Appeals decision and affirming the Tribunal's decision granting summary disposition in favor of the City.

Respectfully submitted,
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Dated: June ___, 2015

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